

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS
LIABILITY LITIGATION

MDL No. 2419
Dkt. No. 1:13-md-2419 (RWZ)

THIS DOCUMENT RELATES TO:

All Actions

**JOINTLY PROPOSED AGENDA
FOR THE OCTOBER 23, 2014 STATUS CONFERENCE**

The Plaintiffs' Steering Committee, Official Creditors' Committee, and Trustee jointly propose the following agenda for the October 23, 2014 status conference. All defendants whose counsel filed notices of appearance in the MDL have been given an opportunity to comment on this proposed agenda.

A. Report to the Court.

1. Status of mediation efforts [Mediation Order, Dkt. No. 394]
 - a. UniFirst and PSC mediation concluded (October 9, 2014)
 - b. Carlos Jassir and Pain Management Center of West Orange Withdrawal from Mediation Participation [Dkt. 1297]
 - c. Insight Mediation
2. Status of insurance declaratory actions:
 - a. *Certain Underwriters at Lloyd's, London v. Ameridose et al.*, 1:13-cv-12609-FDS; *Ironshore Specialty Ins. Co. v. Ameridose et al.*, 1:13-cv-13000-FDS
 - i. Status conference scheduled for November 24, 2:00 PM
 - b. *Great American E&S Ins. Co. v. Liberty Industries, Inc.*, 3:14-cv-00499-VLB
 - i. 1/15/15 deadline for discovery and filing of motions for summary judgment on duty to defend
3. Status of discovery
 - a. Discovery from Affiliated Defendants
 - i. MDL Orders on Stay and Limited Discovery Against Affiliated Defendants [Dkts. 1481, 1482]

- b. MDL Order No. 9: Order on Common Discovery [Dkt. 1425]
 - i. PSC Motion for Clarification [Dkt. 1478]
- c. MDL Order No. 10: Order on Deposition Protocol [Dkt. 1426]
- d. PSC Motion to Compel Insurance Agreements [Dkts. 1468, 1469, 1470]
- e. Status of Preservation Efforts with NECC Trustee

4. Status of litigation track

- a. PSC Motion to Schedule Oral Argument [Dkt. 1495]
 - i. St. Thomas Opposition [Dkt. 1500]
- b. Liberty Motion for Summary Judgment [*Lambert* Dkt. 29, 30. Dkt. 1471, 1472]
(Oppositions to each motion due October 31, 2014)
- c. PSC Motion to Amend Master Complaint Re UniFirst (forthcoming)
- d. Forsyth Street Ambulatory request for removal from service list [Dkt. 1465]
- e. TN Clinic Defendants answers to Master Complaint [Dkts. 1455, 1456, 1457, 1458, 1459, 1460]
- f. St. Thomas Answer to Master Complaint [Dkt. 1464]
- g. PSC Motion for Protocol (forthcoming)
- h. Premier Defendants' proposal for filing answers to representative cases

5. Status of bankruptcy

6. Ameridose Notice of Disposition of Assets [Dkt. 1501]

7. Status of appeals

8. Schedule for future status conferences

- a. December 4, 2014, at 2:00 PM EDT
- b. January 7, 2015 at 2:00 PM EDT

B. Fully-briefed motions.

9. Dallas Back Pain Management/Momentum Pain Management and Abbeselom Ghermay's Motion to Dismiss [Dkt. 1133, 1208, and 1209]

- a. Henley Opposition [Dkt. 1124, 1241]
- b. Dallas Back Pain request for judgment on the papers [Dkt. 1346]

10. PSC's Motion to Amend Previously filed Short Form Complaints [Dkt. 1291] (no argument requested)

- a. Tennessee Clinic Defendants' response [Dkt. 1304]

- b. St. Thomas Entities Request for Extension of Time to Respond until September 4 [Dkt. 1312]
- c. UniFirst Request for Extension of Time to Respond until September 4 [Dkt. 1314]
- d. Liberty Response [Dkt. 1316]
- e. PSC's Notice of Filing of Agreed-To Order on Amending Previously Filed Short Form Complaints [Dkt. 1397]

11. Discovery-related motions

- a. PSC Motion to Compel Insurance Agreements [Dkts. 1468, 1469, 1470]
- b. PSC Motion for Clarification [Dkt. 1478]

12. PSC's Motion for Entry of Case Management Order Regarding Virginia Matters [Dkt. 1188]

- a. Insight's Opposition to Motion for Order [Dkt. 1256]
- b. PSC Reply [Dkt. 1289]
- c. PSC Supplemental Memorandum [Dkt. 1311]
- d. PSC Exhibit [Dkt. 1318]

13. Motions for extension of time / briefing schedules

- i. PSC-Premier Stipulation on 60 Day Extension of Time for Premier to Answer Complaints and Tolling [Dkt. 1419]

14. Motion for Summary Judgment by Hahnemann University Hospital, Pain Care Professionals-Pain Center at Hahnemann, Tenent Healthsystem Hahnemann, LLC (1:14-cv-10434-RWZ) [*King* Dkt. 16]

- a. Plaintiff's Response in Opposition to Motion For Summary Judgment [*King* Dkt. 21]
- b. Letter/request (non-motion) from Plaintiff Norma King for extension of time to secure new counsel [*King* Dkt. 26]

15. Dispositive motions ready for argument by the October 23, 2014 status conference

- a. BKC Motion to Dismiss [Dkt. 896, 897]
 - i. PSC Opposition [Dkt. 1062]
- b. APAC Motion to Dismiss for Failure to State a Claim [Dkt. 1108, 1109]
 - i. PSC Opposition [Dkt. 1452]
- c. Insight's Unopposed Motion to Dismiss (1:13-cv-10558-RWZ) [*Mowles* Dkt. 17]

16. Ameridose's Motion for Order to Proceed with Destruction of Recalled Inventory [Dkt. 1090]
 - a. UniFirst's Response [Dkt. No. 1272]
 - b. TN Clinic Defendants' Response [Dkt. 1449]
 - c. Ameridose Reply [1498]
17. Assented to Motion for Entry of Supplemental Order Transferring Additional Personal Injury Cases [Dkt. 1477]
18. Trustee's Notice Regarding Further Relief from Preservation Order [Dkts. 1174, 1308] and compliance with the Court's August 12, 2014 Order
19. Barrett and Gidaro Letter to Judge Zobel Re Unopposed Motions for Leave to Amend Short Form Complaints in Certain Cases [Dkt. 1453]

C. Briefing in progress.

20. Insight's Motion to Strike Eighteen State Court Orders as Void ab initio [Dkt. 1284, 1285]
 - a. Roanoke Gentry Locke Plaintiffs' opposition [Dkt. 1326]
21. Dispositive Motions:
 - a. Cincinnati Pain Management Consultants Motion to Dismiss [Dkt. 1013, 1014]
 - i. Plaintiffs' Opposition [Dkt. 1493]
 - b. UniFirst Motion to Dismiss [Dkt. 1050, 1051, 1052]
 - i. Opposition put off pending mediation
 - c. Image Guided Pain Managements Motion for Judgment on the Pleadings [Dkts. 1361-1391]
 - d. Encino Outpatient Surgery Center, Inc. Motion to Dismiss for Lack of Jurisdiction and Insufficient Service of Process (1:14-cv-12884) [*Luna-Wynstock* Dkt. 22]
 - i. Plaintiffs' Opposition [*Luna-Wynstock* Dkt. 30]
 - ii. Encino Reply [*Luna-Wynstock* Dkt. 33]
 - e. Glaser Motion to Dismiss [*Luna-Wynstock* Dkts. 27, 28, 29]
 - i. Plaintiffs' Opposition [*Luna-Wynstock* Dkt. 34]
 - f. Liberty Industries, Inc.'s Motion for Summary Judgment [*Lambert* Dkt. No. 29, 30]

- g. Liberty Industries, Inc.'s Motion for Summary Judgment [Dkt. 1471, 1472]
- 22. Insight Health Corp.'s Motion for Reconsideration and Leave to Amend Responses to Request for Admission and to Supplement Motion for Reconsideration of Partial Summary Judgment [Dkt. 1281 and 1282]
 - a. Roanoke Gentry Locke Plaintiffs' Opposition to Motion for Reconsideration [Dkt. 1327]
- 23. Liberty Offer of Judgment [Dkt. 1394]
 - a. Trustee-OCC Motion to Strike Liberty's Offer of Judgment [Dkt. 1402]
 - b. Liberty Opposition to Trustee-OCC Motion to Strike Liberty's Offer of Judgment [Dkt. 1448]
- 24. Liberty's Motion to Seal Documents Filed in Support of Summary Judgment [Dkt. 1401]
- 25. Liberty's Second Motion to Seal Documents Filed in Support of Summary Judgment [Dkt. 1473]
 - a. PSC Assented-To Motion for Extension of Time to Respond [Dkt. 1475]

Dated: October 21, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Kristen A. Johnson, hereby certify that I caused a copy of the above Jointly Proposed Agenda for the October 23, 2014 Status Conference to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: October 21, 2014

/s/ Kristen A. Johnson
Kristen A. Johnson, BBO # 667261